

# The Legalization of Medical Marijuana: A Human Rights Law Perspective

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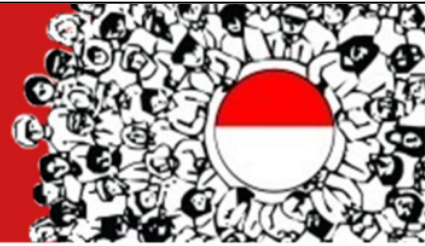
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## The Legalization of Medical Marijuana: A Human Rights Law Perspective

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### ABSTRACT

#### Keywords

Legalization  
Medical Marijuana  
Drugs  
Human Rights

The discourse on legalizing marijuana for medical purposes in Indonesia peaked when legislators discussed the draft law on the narcotics law amendment. Efforts to legalize marijuana for medical purposes have also been pursued by testing the narcotics law. However, through decision number 106/PUU-XVII/2020, the Constitutional Court prohibited medical marijuana as a medical treatment. From the Human Rights perspective, everyone has the right to life and health. Therefore, in society's logic, the prohibition of using marijuana for medical treatment is the same as forbidding sick people to stay alive. It means that the state has failed to guarantee its citizens' lives. But on the other hand, several countries legalized medical marijuana, such as Thailand, Turkey, Lebanon, Netherlands, and Spain. So, why is Indonesia still banning the use of medical marijuana? This research tries to find the legal reasoning of Indonesia's government in the medical marijuana case. These problems were then analyzed using the prescriptive method with a comparative approach to finding new concepts related to legalizing medical marijuana in Indonesia. This study indicates that medical marijuana may be legal in the future of Indonesia's regime. It demonstrates by Indonesian Ulema Council and the Ministry of Health's political wills. The research recommendations are to provide proper education about medical marijuana and the prospect of legalization in the future.

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### 1. Introduction

The legalization discourse of marijuana-medical marijuana (*cannabis sativa*) is a discourse that has continued to grow in recent decades (Murdomo et al., 2021). Due to the development of science and technology, medical marijuana is no longer seen as an illegal drug that is opium

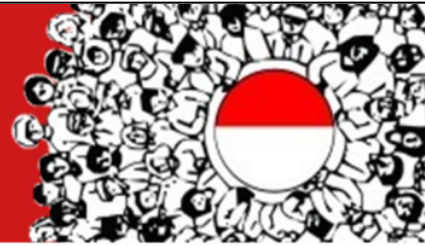
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but has begun to be seen as a drug to cure various syndrome diseases. In 2017, for example, BNN (Indonesian National Narcotics Board, *Badan Narkotika Nasional*) arrested a man for allegedly growing marijuana inside his own home although the marijuana will be used to treat his wife who has *Syringomyelia* disease ([Kumparan News, 2017](#)). However, in Indonesia, the use of medical marijuana even for medicinal needs is prohibited as regulated in Article 6 paragraph (1) letter a and Article 8 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. In fact, he was sentenced to 8 months in prison and a fine of Rp 1 billion for one month of confinement ([Sidik, 2020](#)).

Interestingly, in some European and South and North American countries, medical marijuana is a recreational drug and a cure for some severe diseases such as *Alzheimer's* and *arthritis* ([Petzke et al., 2022](#)). The medical marijuana plant is considered beneficial in various forms of therapeutic treatment and painkillers ([Palace & Reingold, 2019](#)). Even research published in the journal *Molecular Cancer Therapeutics* found that the substance cannabidiol contained in marijuana could kill a gene called "Id-1" that cancer cells use to spread throughout the body. Likewise, the American Food and Drug Administration (FDA) agrees that if the THC content in marijuana provides medical benefits in certain formulations, some approved THC-based drugs are ronabiol (marinol) and nabilone (cesamet), which can be prescribed in pill form in the treatment of nausea vomiting in post-chemotherapy patients. The drug also helps stimulate the appetite of patients with wasting syndrome due to AIDS ([Anywar et al., 2020](#)). The FDA has also approved the liquid drug epidiolex as a drug for epilepsy, dravet syndrome, and lennox gastaut syndrome ([Wu et al., 2019](#)).

Unfortunately, the use of marijuana for medical purposes is still very limited in Indonesia. Article 7 of the Narcotics Law only allows its use in terms of the interests of the development of Science and Technology. The Narcotics Law itself includes marijuana as a class I narcotic, which is a group that is considered very dangerous and should not be used even in the medical world. All marijuana plants are prohibited from being used as leaves, roots, stems, seeds, straws, or derivatives. Marijuana is then on the same list as various other illegal drugs, such as meth, heroin, cocaine, and ecstasy.

The inclusion of marijuana as a class I narcotic is inseparable from the history of the establishment of the Narcotics Law. The Narcotics Law that was first formed originated from the 1961 United Nations Single Convention on Narcotic Drugs (The United Nation's Single Convention on Narcotic Drugs, 1961). This convention was ratified by Indonesia into Law No. 9 of 1976 concerning Narcotics as a replacement for the *Verdovende Middelen Ordonnantie* left over from the Dutch colonial era. [iv] Law No. 9 of 1976 changed several times until it became Law No. 9 of 2009 concerning Narcotics, which is currently still in force.

But along with the development of technology and knowledge, society is increasingly dynamic in response to any issues. Countries that used to participate in the UN single convention are now beginning to legalize marijuana. The United States, The United Kingdom, Canada, and several other countries have legalized marijuana even though it is still within certain restrictions. As of 2022, 37 states of the United States have legalized the use of marijuana as a medicinal ingredient ([Cable News Network Indonesia, 2022](#)). Many countries have also begun to open special research rooms related to the benefits of marijuana in the medical field. In ASEAN, Thailand became the first country to legalize marijuana for medical purposes.

Although it is legally permissible to do research on marijuana, it is challenging to obtain legal permits and marijuana products. So far, marijuana can only be obtained through the BNN or the Ministry of Health as long as it is intended for research and education. Unfortunately, as the issue of marijuana legalization in the medical field grows more robust, there are still

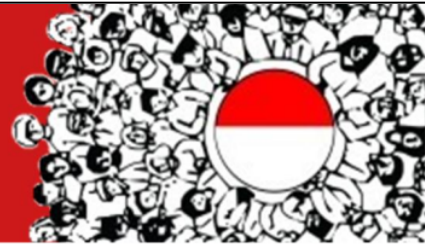
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many unanswered questions. The existing discourse cannot answer whether marijuana is beneficial or harmful. There is still very little literature and research on marijuana in Indonesia. This is motivated by the difficulty of access to legal research on marijuana. Efforts to legalize marijuana were eventually brought to the courts, namely through the Constitutional Court by examining the Narcotics Law. This kind of practice is a practical way to legalize marijuana as it happens in Mexico, Colombia, Argentina, and South Africa. Although the Constitutional Court rejected the application for testing of the Narcotika Law by the Constitutional Court Decision Number 106/PUU-XVIII/2020, the Supreme Court gave a judicial order for the government to conduct further research if it would legalize marijuana for medical purposes.

According to those problems and research background, the author wants to discuss; 1) How should the government do to fulfill the right to health in the legalization of medical marijuana; 2) How other countries do in medical marijuana cases; 3) What is the legal reasoning of Constitutional Court Judges in the decision of rejecting judicial review on Narcotics Law; and 4) How is the prospect of legalization of medical marijuana in Indonesia. Those questions of this research will be discussed in the Discussion part below.

## 2. Research Methods

This research tries to find the legal reasoning of Indonesia's government in the medical marijuana case. These problems were then analyzed using the prescriptive method (Irwansyah, 2020) with a comparative approach (Al-Fatih & Siboy, 2021) to find new concepts related to legalizing medical marijuana in Indonesia.

## 3. Discussion

### 3.1. The Right to Health in the Legalization of Medical Marijuana

As a country of law, Indonesia consistently strives to realize guarantees of the fulfillment of rights to every citizen, including the realization of rights in the health sector. Several legal norms have regulated the right to health, including:

1. Article 25 of the Universal Declaration of Human Rights (UDHR) states that every person has the right to an adequate standard of living for the health and well-being of himself and his family, including the right to food, clothing, shelter, and health services, necessary social services, as well as the right to security in the event of unemployment, illness, disability, abandonment by his spouse, the elderly, or other circumstances that result in a deterioration in the standard of living that happened beyond his power.
2. Article 12 paragraph (1) of the International Convention on Economic, Social and Cultural Rights established by the UN General Assembly 2200 A (XXI) of December 16, 1966, namely that the participating states of the covenant recognize the right of everyone to enjoy the highest attainable standards in terms of physical and mental health.
3. Article 28 H paragraph (1) of the 1945 Constitution states that everyone has the right to live a prosperous life born and mentally, live and have a good and healthy living environment, and obtain health services.
4. Article 9 of Law Number 39 of 1999 concerning Human Rights states that: Everyone has the right to live, maintain life and improve their standard of living. Everyone has the right to live a serene, safe, peaceful, happy, prosperous, born and mental life. Everyone has the right to a good and healthy living environment.

On the basis of some of these legal norms, some support for efforts to legalize marijuana for medical purposes was born in Indonesia. One of the organizations that diligently campaign

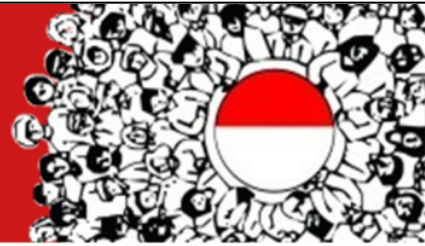
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for the legalization of Marijuana as a medical need is the Nusantara Cannabis Circle (*Lingkar Ganja Nusantara*, hereinafter 'LGN'). LGN argues that marijuana for medical conditions cannot be substituted with other drugs because the demand is as specific as a particular dose (Rasmi et al., 2022; Tarigan & Naibaho, 2020). Some cases of rare diseases in Indonesia require marijuana as a medical commodity. For example, in the case of Fidelis Ari Sudarwoto. Fidelis is a civil servant from West Kalimantan Province who was arrested by the BNN for growing marijuana. The reason from Fidelis grows marijuana that is for the treatment of his wife, Yeni, who suffers from Syringomyelia disease. Fidelis collected information to cure the disease, Fidelis carried out the extraction of marijuana himself by mixing marijuana into his wife's food and drink. Thus, making his wife difficult to eat, devour, and talk fluently (Murdomo et al., 2021).

In addition to Syringomyelia, based on the search conducted by the author, certain diseases and health disorders also require medical marijuana, such as 1) Alzheimer's disease; 2) Loss of appetite; 3) Cancer; 4) Crohn's disease; 5) Diseases affecting the immune system such as HIV/AIDS or Multiple Sclerosis (MS); 6) Eating disorders such as anorexia; 7) Epilepsy; 8) Glaucoma; 9) Mental health conditions such as schizophrenia and post-traumatic stress disorder (PTSD); 10) Multiple sclerosis; 11) Muscle spasms; 12) Nausea; 13) Seizures; and 14) Wasting syndrome (cachexia) (Solahuddin, 2022). Many diseases and health problems, as mentioned above, require treatment and treatment using medical marijuana. Thus, with scientific studies and research, the government needs to take policies related to the fulfillment of citizens' health rights in the context of the use of marijuana for needs medical.

This is further strengthened by the explicit mandate in Articles 7 and 8 of Law Number 35 of 2009 concerning Narcotics, where Narcotics and/or Narcotics cluster I can be used for medical, research, and educational needs. Therefore, if referring to these provisions, legally and bindingly, people can use marijuana for medical purposes. However, in order to avoid illegal use of marijuana with doses that are not in accordance with the dosage, the Government must immediately respond to Articles 7 and 8 in the Health Law by other technical regulations, for example, in the form of a Regulation of the Minister of Health or in a higher form through a Presidential Regulation. Through the apparent entanglement of legal norms, the BNN and the Police are expected not to arbitrarily arrest marijuana users for medical needs. This is because people get legal protection to fulfill their health rights.

### 3.2. Marijuana Legalization in Several Countries

From its history, marijuana began to be banned from its free use since the sole United Nations (UN) convention on narcotics in 1961 (Collins, 2020; Kitchen et al., 2022). This stems from a long debate between States since 1911 over the regulation of opium that spread to the issue of marijuana. On proposals from Egypt, South Africa, and Turkey, marijuana is also regulated in regulatory and prohibitive laws. The convention took place after an affirmation from the WHO in 1954 that processed cannabis had absolutely no medical benefits, who received a mandate from the UN Narcotics Drugs commission to examine the mental and physical effects of cannabis (Clark et al., 2021). After that, various international agreements on narcotics were born in which marijuana was included in class I narcotics along with opium, heroin, morphine, and cocaine at the time. Then this convention was amended in 1971-1978 so that the cannabis ban system could be implemented in various countries around the world to date, including in Greece and Indonesia.

Interestingly, in the modern era, with the development of science and technology, several developed countries as well as UN veto holders such as America, Britain, and China, actually make full use of this plant in their countries. The cannabis plant is widely empowered in developed countries, in contrast to developing countries that are still busy with various kinds

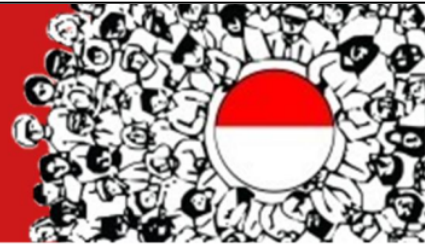
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of social issues, so to do in-depth research ends up being a little behind, as is the case in Indonesia. In addition to the above-developed countries, until now, there have been many other countries that are constitutionally allowed to use cannabis in their countries such as the Netherlands, Germany, Argentina, Cyprus, Ecuador, Mexico, Peru, Switzerland, Spain, Portugal, Finland, Belgium, Czech Republic, Brazil, Chile, Paraguay, Australia, Colombia, Uruguay, and several more countries, including Greece.

The use of marijuana in each country is based on strict regulations and varies according to the existing socioeconomic and cultural conditions. Greece, for example, allows the use of cannabis but only for medical purposes, in contrast to Canada which not only allows Doctors to prescribe medical cannabis to patients but also has mass-produced (industrially) cannabis-based drugs and exported them to countries in need. Some States also provide cannabis pharmacies in some parts of the region as a center for purchasing cannabis plants, such as Uruguay. While in the Netherlands, a special place is provided, such as a coffee shop that not only provides a cup of coffee to be enjoyed but there are also cannabis leaves that are ready to accompany, of course, with a dose that has been determined by the Government, and there are many more various regulations that exist in various parts of the world.

## 1. The Netherlands

In 1976 the Dutch government explicitly legalized the use of cannabis, namely with a policy to stop or tolerate punishment (under certain conditions) against cannabis criminals as long as the offender is not related to level 1 illegal drugs and the marijuana used is still in a predetermined dose. The Netherlands allows its citizens to enjoy recreational cannabis in places that have been established since 1996, namely at the Coffee Shop. Interestingly, the Dutch government does not mind where the cannabis stocks of the owners of the Coffee Shop are obtained, but the supply is still considered a criminal act (Korf, 2020; Solinge, 2017).

Furthermore, in January 2013, the Dutch government issued a regulation stating that visitors from coffee shops must be Dutch citizens, but this regulation was only implemented in Zeeland, North Brabant and Limburg after receiving a lot of criticism. Possession of a mild drug for personal use is limited to a certain amount i.e. only 5 grams of marijuana or 5 cannabis plants are allowed, but if proven to be storing larger quantities or possessing hard drugs can lead to imprisonment. For courts adjudicating offences in possession, trade, and use are usually handled by courts at the municipal level, unless there is an indication of the involvement of an international syndicate (Government, 2022).

## 2. Uruguay

On December 20, 2013, the Uruguayan Parliament and President Jose Mujica finally passed a law on the legalization of marijuana. Uruguay became the first country in the world to regulate the laws of the cannabis market from seed to sale of cannabis. Now the country will take control over the import, export, cultivation, production and distribution of cannabis through the newly established organization Institute for Regulation and Control of Cannabis (Institute de Regulacion y Control de Cannabis, IRCCA). In a statement to the INCB, Uruguayan Foreign Minister Luis Porto, explained that this policy is to account for the regulation of the cannabis market in Uruguay and is from a Government Strategy aimed at "guaranteeing the right to public security".

Although legalized, the regulations on the cannabis trade in Uruguay are very strict. Cannabis consumption will be allowed for citizens under the rule that each citizen can only buy a maximum of 40 grams each month from a state pharmacy at a price of 20 Pesos or around Rp 10,000, and only registered citizens of Uruguay who are 18 years of age or older

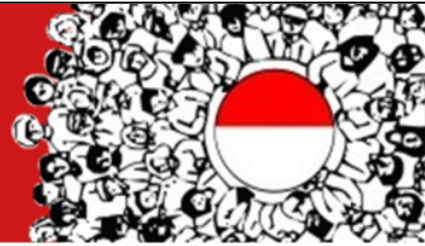
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are allowed to buy. With that the government will monitor the monthly cannabis purchases of citizens. As for the cultivation of cannabis, each house should only grow a maximum of six plants and the age of the plant is limited to a year or produce about 480 grams.

### 3. Thailand

Thailand became the first country in Asia to legalize cannabis on June 9, 2022 for medical and research purposes. Thais are allowed to grow cannabis at home but must report to the local government. Thai government policy allows anyone to sell the dish if it follows the main rule is that the product must contain less than 0.2% tetrahydrocannabinol (THC), a compound that gives users a feeling of "hangover" (Mungmunpantipantip, 2018; Sommano et al., 2022). To grow cannabis, Thais can register through an app called Pluk Kan, which was developed and operated by the Thai Food and Drug Administration. However, cannabis extracts with Tetrahydrocannabinol (THC) levels exceeding 0.2% are still on Thailand's Category 5 narcotics list, so both sellers and buyers of cannabis extracts with THC levels above 0.2% must have a narcotics sales license from the Thai government.

### 4. Italy

Italy allows the use of marijuana for medical purposes. Nonetheless, any form of mass sale, purchase and cultivation of marijuana is illegal. Even marijuana dealers in Italy face up to 10 years in prison. But consuming marijuana in Italy is categorized as not a criminal act.

### 5. United States of America (USA)

The United States officially legalized marijuana on December 6, 2012 in the states of Colorado and Washington. In Colorado, marijuana is officially legalized for personal consumption on the condition that the user is over 21 years old. Meanwhile, in Washington, marijuana can be owned at a maximum of 28 grams (Hansen et al., 2020; Mennis & Stahler, 2020). Meanwhile, California followed on November 8, 2016, when the California parliament passed the rules of California's Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA 2016). The rule allows people over 21 to have limited amounts of marijuana for personal use and marijuana cultivation in their private home yards. Support for the passage of this law, in general brings the narrative of marijuana legalization as something that touches on the issue of justice, both in terms of social and in terms of law, especially criminal law. The legalization of marijuana is also believed to restore the proportionality of arrests and convictions that once tended to target more cannabis users on a small scale. Some states that have legalized marijuana include Alaska, Maine, Massachusetts, Nevada, Oregon, Washington state, Washington D.C., and Vermont (Smith & Goniewicz, 2020).

### 6. Mexico

Mexico's Supreme Court lifted the ban on the use of marijuana for recreational purposes provided for in the public health law. The Supreme Court's ruling comes after discussion of a bill regulating the legalization of cannabis came to a halt in Mexico's bicameral Parliament. In its ruling, the Supreme Court asked Congress to speed up the discussion of the bill. The bill would later create a licensing system not only for buying and selling marijuana, but also for the cultivation, transportation and export of marijuana.

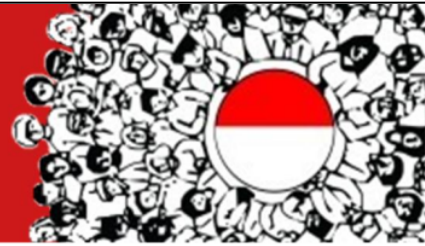
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## 7. Colombia

Colombia's Constitutional Court authorized the use of marijuana and cocaine in certain quantities and limits of less than 20 grams for marijuana and 1 gram for cocaine. In Colombia, everyone who wants to grow marijuana must apply to the National Narcotics Council to have a license. Medical marijuana is used to treat a number of mild ailments such as Crohn's disease, seizures, HIV and nausea.

## 8. Canada

Canada has regulated the use of cannabis since 1999 under applicable conditions, namely that patients who must obtain cannabis treatment are allowed to use it. Meanwhile, recreational use of marijuana has been practiced since 2018. In Canada, adults can purchase cannabis oil, grains, plants and dried cannabis from licensed manufacturers and retailers and can have up to 30 grams (an ounce) of dried cannabis in public.

## 9. Germany

The German Federal Government had legalized marijuana for medical purposes in 2017. Interestingly, since its legalization, the German market has become the largest in Europe by selling high THC products worth 154 million pounds or Rp 2.9 trillion to patients in 2016. Even Forbes estimates that by 2024 there will be more than one million patients in Germany will get access to cannabis for medical purposes.

## 10. South Africa

South Africa's Constitutional Court approved the legalization of cannabis for public use on Tuesday 18 September 2018. The ruling stated that criminalization of marijuana users was unconstitutional. The Constitutional Court also ordered parliament to draft a new law within 24 months to follow up on the court order. However, the ruling did not specify the amount or extent of marijuana that can be used by adults for personal consumption. A year earlier, in March 2017, a Court in the Western Cape ruled that the ban on the use of cannabis by adults at home was unconstitutional. The court's ruling was a move that effectively decriminalized cannabis users in the province, which includes Cape Town. Although the ruling was met with resistance from ministers, police, health and trade practitioners, the South African Council of Medical Research dismissed those concerns. They launched trials to help guarantee the quality, consistency, and standard of the medical benefits of cannabis.

## 11. Spain

Private possession of marijuana in Spain is legal. However, cannabis ownership in this country is tolerated by only 2 stems of the plant. Interestingly, the legalization law of marijuana in Spain is quite complicated, namely if it is traded and consumed in a public place, it is illegal, on the contrary, if it is grown and consumed for personal use at home, it is legal.

## 12. Ecuador

Ecuador allows cannabis for personal needs with a maximum possession of 10 grams per person. Ecuadorians can also grow cannabis at home. However, the cultivation and buying and selling of cannabis for business purposes is illegal in Ecuador.

## 13. Peru

Possession of marijuana in Peru is legal but with a certain amount limit of up to 8 grams. This provision also applies only to marijuana not other types of narcotics.

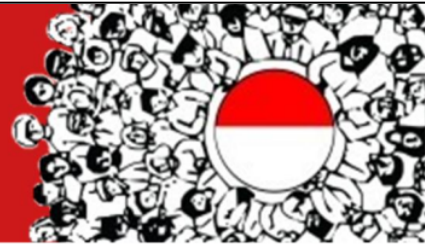
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Interestingly, a 2015 poll conducted by Ipsos: Global Market Research and Public Opinion Specialist, stated that about 65% of Peruvians agreed to legalize the use of marijuana for treatment, while another 13% agreed to legalize it for pleasure reasons (Cabanillas-Rojas, 2020).

## 14. Australia

Australia's capital, Canberra became the first region to legalize the use of cannabis for recreation and cultivation. This decision was taken by a vote by lawmakers, and the provisions became effective on 31 January 2020. Cannabis legalisation in Australia applies on the condition that Canberrans over the age of 18 are allowed to have a total of 50 grams of dried cannabis per person. Even so, massive supplying of marijuana is still illegal.

## 15. Argentina

In 2009, Argentina's Supreme Court once enacted a new law relating to marijuana possession that allows a person to personally use cannabis leaves in small quantities. But the Supreme Court insists this regulation cannot be considered a legal license to consume marijuana excessively. Furthermore, in 2020, the Argentine Government allowed its citizens to grow cannabis at home for health purposes. The Argentine government also allows pharmacies to sell oil, creams and cannabis-based products to the public. Even the Argentine government also ordered public and private insurance systems to cover the cost of treating cannabis ingredients prescribed to patients.

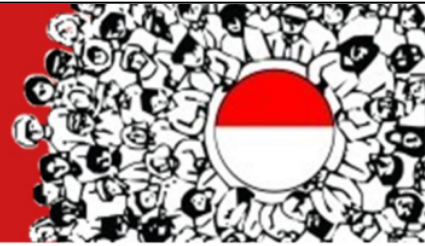
## 16. Portugal

In 2001, under Law 30 of 2000, Portugal became the first country in the world to legalize the use of all drugs, and started treating drug users as sick people, instead of criminals. The international trend is clear: countries are openly approving policies that would have been unthinkable just five or ten years ago. The nations that legalize marijuana first will provide, perhaps at some risk to their own populations, an external benefit to the rest of the world in the form of knowledge, however the experiments turn out (Hall, 2020).

## 17. Cyprus

Cyprus is an island nation in the Mediterranean Sea of Europe that legalizes the possession of cannabis but a maximum of only 15 grams. In addition, the Cypriot government allows its citizens to grow cannabis up to a maximum of 5 tree trunks.

Based on some of the comparisons above, it can be seen that although cannabis is legalized, its use, use, and cultivation are still very limited and in private spaces. This is a consequence of the state in protecting the right to health of its citizens. That is, the legalization of cannabis must also look at the legal culture in the country, this will then raise the question of why cannabis legalization is widely hedged by countries in Europe and America? The answer is because in these countries still respect the privacy rights of their citizens, the government will not interfere into the private sphere. On the contrary, if the state warag consumes and cultivates marijuana in the public domain (public places etc), then it is the duty of the state to punish it.



### 3.3. The Legal Reasoning of Constitutional Court Decision in the Medical Marijuana Case

Efforts to legalize marijuana through the *sud ah* court route were **tried** several times by the Indonesian people by testing the Narcotics Law. For example, **Decision No. 106/PUU-XVIII/2020**. In the Ruling, the Constitutional Court held that although the use of narcotics has been used lawfully and legally recognized as part of health services in at least some countries, including Argentina, Australia, the United States, Germany, Greece, Israel, Italy, the Netherlands, Norway, Peru, Poland, Romania, Colombia, Switzerland, Turkey, the United Kingdom, Bulgaria, Belgium, France, Portugal, Spain, New Zealand, and Thailand, but the facts of the law **it cannot necessarily be used as a parameter, that all types of narcotics can be used for health services that can be accepted and applied by all countries**. This is natural, given the differences in the character of both the types of narcotics materials, the structure, and the legal culture of the people of each country. From an Indonesian perspective, although it is obtained legal facts that many people suffer from certain diseases with phenomena that may be "curable" by treatment that utilizes certain types of narcotics (marijuana), it is not directly proportional to the great consequences caused if there is no readiness, especially related to the legal structure and culture of society, including the facilities and infrastructure needed are not yet fully available. Moreover, with regard to the utilization of the type of Narcotics Group I is included in the category of narcotics with a very high dependence impact. Therefore, the use of Class I Narcotics in Indonesia must be measured from the readiness of the elements as outlined above even if there is a possibility of urgency for their use.

The Court added that the grouping of narcotics into three types of groups as referred to in the Narcotics Law, namely Class I Narcotics, Class II Narcotics, and Class III Narcotics is an important thing to do, considering the nature of the three types of narcotics has different impacts. Likewise, with regard to the legal consequences caused, if there is misuse of the use of narcotics that can pose a danger, it is not only related to life threats, but also to wider human life. Therefore, it is very relevant if the division of types of narcotics groups is maintained to be used as a reference in making regulations related to the use, assessment and research, and enforcement of the law when abuse occurs. Because each type of narcotics group has a different impact, especially in terms of the level of dependence, in determining the types of narcotics that are determined into a certain type of narcotics group requires a very strict scientific method.

Based on the Explanation of the Narcotics Law, it can be seen that the type of Narcotics Class I has been affirmed in the Explanation of Article 6 paragraph (i) letter a of the Narcotics Law can only be used for the purpose of developing science and is not used in therapy, and has a very high potential to cause dependence. Thus, from the imperative restrictions referred to simply, it can be understood that Class I narcotics are the type of narcotics that have the most serious impact compared to other types of narcotics. Thus, in terms of the use of Class I Narcotics, it cannot be separated from the fullness of these very strict conditions, especially if there will be a change in its use into other (different) uses that have the potential to cause human life casualties, if scientific studies and research are not carried out first.

The use of class I narcotics for health services and/or therapy, is the same as the desire to change the use of class I narcotics which is imperatively only allowed for the purpose of developing science. Such utilization restrictions are inseparable from the consideration that this type of Class I Narcotics has a very high potential to cause dependence. Therefore, the use of class I narcotics for health services and / or therapy there is no evidence that there has been a comprehensive and scientifically in-depth study and research in Indonesia so that it cannot be accepted for rationality reasons, both medically, philosophically, sociologically, and juridically. The Court underlined that while there are some states that are a relief, it cannot

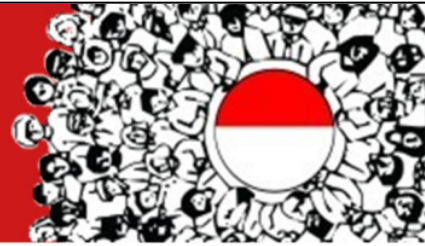
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necessarily be generalized that countries that have not or have not legalized the free use of narcotics can then be said to have not optimized the benefits of the narcotics.

Interestingly, although the Court cannot accept the legal grounds for the legalization of marijuana, it can actually understand the social conditions of people who use the Class I narcotics type for therapy in curing certain diseases. However, considering that this is not yet a valid result of scientific study and research, then keeping in mind the effects or impacts that can be caused if legalized. Therefore, there is no option for the Court to encourage the use of class I narcotics after scientific studies and research related to the possibility of utilizing class I narcotics types for health services and/or therapy. Furthermore, the results of the scientific assessment and research can be used as consideration for lawmakers in formulating possible policy changes related to the use of class I narcotics types.

As for the need for certainty that the type of Class I Narcotics can be used for the purposes of health services and / or therapy through the assessment and research in question, on the one hand it also aims to provide legal protection and safety to the public from the dangers of using the type of Class I Narcotics which has a very high potential to cause dependence. Therefore, imperatively before there were results of assessment and research, the type of Class I Narcotics was only really used for the purpose of developing science and was not used for health services and/or therapy. Even for abusers of the Type of Narcotics Class I who are unlawfully threatened with severe imprisonment as regulated in Article 111 to Article 116 of the Narcotics Law. This sanction is caused because the state wants to protect the nation's and the state's safety from the dangers of misuse of narcotics, especially the type of Narcotics Class I. Thus, protection for the community can really be realized because the type of Narcotics Class I must still be viewed as the most dangerous type of narcotics, especially when it is associated with the impact of its very high dependence.

If explored further, the need for certainty whether or not the type of Class I Narcotics can be used for the benefit of health services and/or therapy has long been a very urgent need. This is evidenced by the explanation of Article 6, paragraph (1) letter a of the Narcotics Law, which already lists "a strict prohibition on the use of class I narcotics for therapy". In other words, the actual "phenomenon" regarding the need for the type of Class I Narcotics to be used for therapeutic purposes has arisen since before the Narcotics Law was promulgated. Thus, through the Said Judgment, the Court reiterated that the government should immediately follow up on the Decision with regard to the assessment and research of the type of Class I Narcotics for the purposes of health services and/or therapy, the results of which can be used in determining policies, including in this case the possibility of changes in the law by the framers of the law to accommodate the said needs. This is because the handover of authority by the Court to the framers of the law is based on the fact that the Narcotics Law not only regulates the classification of types of narcotics but also regulates criminal sanctions.

### 3.4. Projection of Medical Marijuana Legalization in Indonesia

Several elements and community organizations have provided support regarding the projected legalization of medical marijuana in Indonesia. Ikhsan Abdullah, in the Executive Director of Indonesia Halal Watch (IHW) even mentioned that the legalization of medical marijuana does not actually require additional legal instruments or a kind of fatwa from the MUI (Indonesian Ulama Council, *Majelis Ulama Indonesia*) (Mukhtar, 2022). This is because Articles 7 and 8 of Law Number 35 of 2009 concerning Narcotics, where Narcotics and / or Narcotics Cluster I, can be used for medical, research and educational needs. Meanwhile, until this article was written, the MUI had not released a fatwa regarding the use of marijuana for medical purposes. The MUI fatwa commission is still conducting research and studies related to the legalization of medical marijuana (Priyasgoro, 2022). On the other hand, the Deputy

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Minister of Law and Human Rights of the Republic of Indonesia, Edward Omar Sharif Hiariej, said that the Constitutional Court (*Mahkamah Konstitusi/MK*) decision encouraged the government and the House of Representatives of the Republic of Indonesia to conduct a study on the use of medical marijuana. The House of Representatives of the Republic of Indonesia also promised to conduct a study related to the discourse on amendments to the Narcotics Law.

Thus, projections regarding the legalization of medical marijuana in Indonesia in the future are very likely to condition to be realized. Nonetheless, it is necessary to strengthen both the approach of religious fatwas and scientific research related to the projection of the legalization of medical marijuana. Some fatwa-giving institutions, such as the *Muhammadiyah Tarjih Council* or *Lajnah Bahtsul Masail Nahdlatul Ulama*, the two prominent Islamic streams in Indonesia, are expected to contribute *ijtihad* thought through an Islamic religious approach (Aditya & Al-Fatih, 2019). Furthermore, the government is also likely to provide attention through the National Research and Innovation Agency (*Badan Riset dan Inovasi Nasional/BRIN*) to conduct research on the topic of medical cannabis. Because Indonesia is the homeland of the Muslims as the majority, so it's vital to have a great fatwa by MUI and so on, to strengthen the regulation and prospective legalization of medical marijuana in the future. Scientific collaboration and religious *ijtihad* will provide clear and straightforward projections regarding efforts to legalize medical marijuana in Indonesia in the future.

## 4. Conclusion

Based on the discussion above, it can be concluded that legalizing medical marijuana in Indonesia is just a matter of time to be realized. Articles 7 and 8 of the Narcotics Law have explicitly provided signs for the use of medical marijuana. However, the policy of legalizing medical marijuana in Indonesia still needs to be set forth in more binding legal norms. The author suggests that the legalization of medical marijuana can be contained in the form of the Narcotics Bill, The Minister of Health Regulation, Presidential Regulation, and also fatwas from religious institutions, such as MUI fatwas, fatwas of the *Tarjih Muhammadiyah Council* or Fatwas of *Lajnah Bahtsul Masail Nahdlatul Ulama*.

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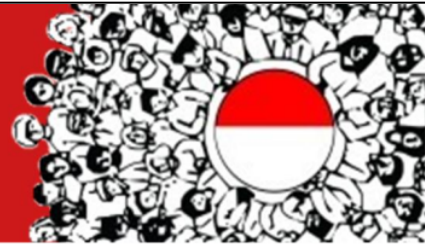
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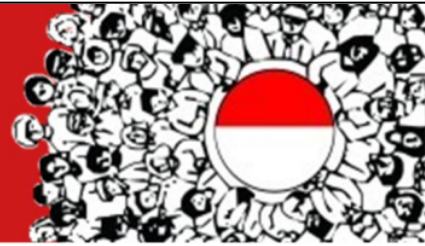
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**The Legalization of Medical Marijuana: A Human Rights Law Perspective**

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ABSTRACT

**Keywords:**  
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The discourse on legalizing marijuana for medical purposes in Indonesia peaked when legislators discussed the draft law on the narcotics law amendment. Efforts to legalize marijuana for medical purposes have also been pursued by testing the narcotics law. However, through decision number 006/PUU-XVII/2020, the Constitutional Court prohibited medical marijuana as a medical treatment. From the Human Rights perspective, everyone has the right to life and health. Therefore, in society's logic, the prohibition of using marijuana for medical treatment is the same as forbidding sick people to stay alive. It means that the state has failed to guarantee its citizens' lives. But on the other hand, several countries legalized medical marijuana, such as Thailand, Turkey, Lebanon, Netherlands, and Spain. So, why is Indonesia still banning the use of medical marijuana? This research tries to find the legal reasoning of Indonesia's government in the medical marijuana case. These problems were then analyzed using the prescriptive method with a comparative approach to finding new concepts related to legalizing medical marijuana in Indonesia. This study indicates that medical marijuana may be legal in the future of Indonesia's regime. It demonstrates by Indonesian Ulama Council and the Ministry of Health's political wills. The research recommendations are to provide proper education about medical marijuana and the prospect of legalization in the future.

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## 1. Introduction

The legalization discourse of marijuana-medical marijuana (cannabis sativa) is a discourse that has continued to grow in recent decades (Mardomo et al., 2021). Due to the development of science and technology, medical marijuana is no longer seen as an illegal drug that is opium